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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/038,278	01/04/2002	Yoshiharu Omura	771,057	6826

7590
John S. Egbert
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7th Floor
412 Main Street
Houston, TX 77002

08/29/2003

EXAMINER

SMALLEY, JAMES N

ART UNIT	PAPER NUMBER
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3727

DATE MAILED: 08/29/2003

11

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/038,278

Applicant(s)

OMURA, YOSHIHARU

Examiner

James N Smalley

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 June 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 11-14 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 11-14 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

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DETAILED ACTION

Priority

1. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

Continued Examination Under 37 CFR 1.114

2. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 24 June 2003 has been entered.

Claim Objections

3. Claim 11 is objected to because of the following informalities: "...contents form the can..." should be changed to, "...contents from the can...", in the first paragraph. In the last line of the claim, "...upon identical...", should be changed to, "...upon an identical..." Appropriate correction is required.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
5. Claim 13 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

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It is unclear from which claim, claim 13 should depend, since it currently depends from a canceled claim 7.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kyo '862 in view of Bozek '400.

Kyo '862 discloses a Stay-On-Tab Easy Lid Opening Structure, comprising:

a can cover having an upper surface, the can cover having an outer rim extending upwardly from the upper surface of the can,

a stay-on tab attached to the upper surface by a support (6) extending upwardly from the can cover, the can cover having a scoring means (7c, 7d) formed under one end of the stay-on tab, the scoring means for rupturing upon compressive contact by the one end (4a) of the stay-on tab, the one end of the stay-on tab being adapted to push downwardly on a portion of the can cover surrounded by the scoring means when another end (5a) of the stay-on tab is pulled upwardly, the score means defining a content take-out hole, the support being connected to a central portion of the stay-on tab, the central portion extending contiguously to the one end of the stay-on tab such that the another end can be pulled upwardly from the upper surface of the can cover while the central portion remains juxtaposed in close contact with the upper surface of the can cover, the another

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end of the stay-on tab being a planar member, each of the one end and the another end being inclined upwardly from the upper surface such that when one of the ends of the stay-on tab is pressed downwardly another end of the stay-on tab moves upwardly away from the upper surface of the can cover, the can cover being configured so as to be stackable upon [an] identical can cover.

(Examiner notes fig. 3B, wherein it can clearly be seen that a finger presses down one end (4a) and another end (5a), which is clearly planar, is raised to allow a finger to pull up on the stay-on tab. Because both ends are inclined upwardly from the surface, this structure inherently possesses the “see-saw” effect of the applicant’s disclosure.

Further, Examiner notes any flat object is capable of being stacked upon a similar-shaped object. However, for the can end disclosed in Kyo ‘862, it can be seen that the stay-on tab of the can end is disposed below a top surface of the can lid periphery, thus facilitating stackability.)

Kyo ‘862 does not disclose:

the can cover having wrinkles formed therein so as to extend thereacross and in generally parallel relationship to each other so as to prevent upward swelling of the can cover by an expansion of contents from the can.

Bozek ‘400 discloses a Nonflipping Beer Can End, comprising wrinkles/groove formations (41, 42) disposed in a generally parallel relationship to each other. Further, Bozek ‘400 discloses in col. 5, lines 56-59, that the groove formations provide, “a greater reinforcement of the end panel against flexure.”

It would have been obvious to one having ordinary skill in the art at the time the invention was made, to provide the end shell of Kyo ‘862 with the groove formations (41,

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42) of Bozek '400, so as to obtain the stated benefit of greater reinforcement of the end panel against flexure. One having ordinary skill would be motivated to make such a modification because it is well within ordinary skill to substitute working parts of beverage can ends on other beverage can ends to achieve a desired result or advantage.

8. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kyo '862 in view of Bozek '400, as applied above under 35 USC 103(a) and in further view of Perry '721.

Kyo '862 does not the limitations of claim 12.

Perry '721 discloses a Container with Attached Closure, comprising:

a support having an elliptical or polygonal cross-section so as to prevent the stay-on tab from being rotated (see col. 17, lines 31-32, wherein it is disclosed integral rivet (436) is ovular to prevent rotation of the tab.).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the stay-on tab of Kyo '862 with the ovular rivet of Perry '721, so as to obtain the benefit of prevention of rotation of the tab, thus maintaining the one end of the stay-on tab above the portion of the can cover surrounded by the score groove.

9. Claims 13 and 14 rejected under 35 U.S.C. 103(a) as being unpatentable over Kyo '862 in view of Bozek '400, as applied above under 35 USC 103(a) and in further view of Cudzik '750. (Should claim 13 depend from claim 12, instead of the assumed claim 11, it would then be dependant from Kyo '862 in view of Bozek '400 and in view of Perry '721; see rejection of claim 13 under 35 USC 112, 2nd paragraph above.)

Regarding claim 13, Kyo '862 does not disclose:

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an auxiliary support protruding upwardly from the upper surface of the can cover, the auxiliary support positioned beside the support, the auxiliary support connected to the central portion of the stay-on tab, the auxiliary support passing through the central portion and protruding upwardly from the central portion.

Cudzik '750 discloses it is known to provide an auxiliary supporting means (52) protruding upward from the can cover and being provided beside the supporting means and teaches, in col. 3, lines 46-54 that the rivets/auxiliary supporting means (52) define an imaginary pivot line about which a high strength solid lever-like tab can pivot.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the supporting means of Kyo '862 to further provide auxiliary supporting means (52) so as to obtain the benefit of a high strength solid lever-like tab when pivoted.

Regarding claim 14, Kyo '862 does not disclose the auxiliary support having an upper end spread so as to form a head.

Cudzik '750 shows the upper end of the auxiliary support (52) spread so as to form a head (70) and discloses the head holds the tab to the upper surface in a known matter, in col. 4, lines 43-46.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to spread the head of the auxiliary support means so as to form a head because one having ordinary skill would recognize the head prevents removal of the tab from the upper surface, and such a connection is disclosed as being well known in the art.

Response to Arguments

10. Applicant's arguments with respect to claims 7-10 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Telephone inquiries regarding the status of applications or other general questions, by persons entitled to the information, "should be directed to the group clerical personnel and not to the examiners. In as much as the official records and applications are located in the clerical section of the examining groups, the clerical personnel can readily provide status information without contacting the examiners", M.P.E.P. 203.08. The Group clerical receptionist number is (703) 308-1148.

If in receiving this Office Action it is apparent to applicant that certain documents are missing, e.g., copies of references cited, form PTO-1449, form PTO-892, etc., requests for copies of such papers or other general questions should be directed to Tech Center 3700 Customer Service at (703) 306-5648, email CustomerService3700@uspto.gov.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James N Smalley whose telephone number is (703) 605-4670. The examiner can normally be reached on M-Th 8-5:30, Alternate Fri 8-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee Young can be reached on (703) 308-2572. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9302 for regular communications and (703) 872-9303 for After Final communications.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1148.

Other helpful telephone numbers are listed for applicant's benefit.

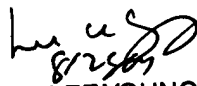
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If the information desired is not provided above, or has been changed, please do not call the examiner (this is the latest information provided to him) but the general information help line below.

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Jns
22 August 2003

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